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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/121,368	07/23/1998	BRADLEY C. LINDEN	S13.12-0036	3233
23838 7590 10/02/2008 KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005				
			EXAMINER KOHARSKI, CHRISTOPHER	
			ART UNIT 3763	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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MAILED

OCT 01 2008

In re Application of
Bradley C. Linden *et al*
Application No. 09/121,368
Filed: July 23, 1998
Practitioner Docket No.: S13.12-0036

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: ORDER TO
: SHOW CAUSE
:
:

CENTRAL REEXAMINATION UNIT
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This is a show cause order based on the expiration of U.S. patent 5,538,504, for which the present application requests reissue.

BACKGROUND

1. The present application was filed on July 23, 1998, for reissue of U.S. patent 5,538,504 (the '504 patent) issued July 23, 1996.
2. The present application for reissue of the '504 patent is pending; the Image File Wrapper record shows that an action on claim patentability has been mailed.
3. The Office's financial records show that the 11.5 year maintenance fee due by July 23, 2008 (the end of the maintenance fee grace period) was not paid. As a result, the '504 patent expired at midnight on July 23, 2008, for failure to pay the 11.5 year maintenance fee due. ¹
4. The '504 patent has expired for failure to pay the 11.5 year maintenance fee. A notice to the public has been published to that effect in the *Official Gazette*. ²

ORDER TO SHOW CAUSE

As pointed out above, the present reissue proceeding is for reissue of the '504 patent, and that patent has expired for failure to pay the 11.5 year maintenance fee. Since the '504 patent has expired for failure to pay the first maintenance fee, the Director of the USPTO does not have the authority under 35 U.S.C. § 251 to examine the application for reissue of the '504 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993).

¹ See: MPEP § 2506

² See: 1334 *OG* 80 (September 9, 2008), available at <http://www.uspto.gov/web/patents/patog/> See also: 1334 *TMOG* 80 (September 9, 2008)

As stated in *Morgan*:

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only "for the unexpired part of the term of the original patent." Thus, **when Morgan's original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority** because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393; Emphasis added]

Because the Director does not have the authority under 35 U.S.C. § 251 to continue to examine the application for reissue of the '504 patent, the Office intends to vacate the present reissue proceeding, and thereafter hold the application for reissue of the '504 patent to be an abandoned application as a matter of "housekeeping."

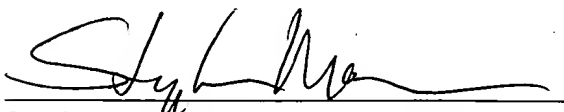
Applicant is hereby being provided with a period of **30 DAYS** from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding.

If applicant proposes to show cause why the present reissue proceeding should not be vacated, applicant's showing must include an explanation of why the proceeding should continue in spite of the expiration of the original patent.

If applicant makes a showing, the showing will be evaluated as to whether it provides sufficient basis as to why the present reissue proceeding should not be vacated. A failure to respond to this show cause order within the 30-day period that has been set will result in the present reissue proceeding being vacated by default. If the present reissue proceeding is vacated, the application for reissue of the '504 patent will be forwarded to Technology Center 3700 for processing as an abandoned application.

CONCLUSION

1. Applicant is being provided with a period of 30 DAYS from the mailing of this ORDER to show cause why the Office should not vacate the present reissue proceeding.
2. Failure by applicant to respond to this show cause order within the 30-day period that has been set will result in the vacatur of the present proceeding by default, followed by a mailing of a Notice of Abandonment in the application for reissue of the '504 patent.
3. Jurisdiction over reissue application 09/121,368 is being retained by the Office of Patent Legal Administration, pending a response by the applicant, or the expiration of time for a response.
4. Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-7743 or, in his absence to Colleen Dunn, TQAS/SPRE in Technology Center 3700, at (571) 272-1170.



Stephen Marcus, Senior Legal Advisor
Office of Patent Legal Administration